

Message Text

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ACTION EA-09

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C O N F I D E N T I A L TAIPEI 1309

E.O. 11652: GDS
TAGS: PINS, SHUM, TW
SUBJECT: RETRIAL OF WANG HSING-NAN

REFS: (A) STATE 48305, (B) TAIPEI 1133

1. ALTHOUGH THE ENGLISH-LANGUAGE VERSION OF THE GIO PRESS RELEASE ANNOUNCED THAT WANG'S CASE HAD BEEN EXAMINED BY THE "RETRIAL MILITARY COURT," THE CHINESE TERM EMPLOYED (FU PAN, 6010/0445) AND THE ACUTAL PROCEEDINGS OF THE RE-EXAMINATION OF WANG'S CASE INDICATED THAT THE CASE WAS ACTUALLY SUBMITTED FOR APPELLATE REVIEW. UNDER ROC MILITARY TRIAL LAW, THERE IS A TWO-LEVEL COURT SYSTEM. AFTER A CASE HAS BEEN TRIED BY THE LOWER MILITARY COURT, THE DEFENDANT (OR OTHERS) MAY APPLY FOR AN APPELLATE REVIEW BY A HIGHER MILITARY COURT. THE HIGHER MILITARY COURT IS CHARGED WITH REVIEWING THE JUDGMENT OF THE LOWER COURT WITH RESPECT TO THE "DETERMINATION OF FACTS AND APPLICATION OF LAW." THE HIGHER COURT CAN EITHER UPHOLD OR SET ASIDE THE JUDGMENT OF THE LOWER COURT. IF IT SETS ASIDE THE ORIGINAL JUDGMENT, IT MAY RENDER A JUDGMENT OF ITS OWN OR SEND THE CASE BACK TO THE LOWER LEVEL COURT FOR FURTHER PROCEEDINGS.

2. IN REACHING ITS DECISION, THE HIGHER COURT MAY EXAMINE NEW EVIDENCE AND INTERROGATE THE DEFENDANT IF
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IT BELIEVES THIS WOULD BE USEFUL. HOWEVER, LAWYERS AND OTHERS WITH WHOM WE HAVE CONSULTED HAVE INFORMED US THAT THE MILITARY APPELLATE REVIEW SYSTEM IS USUALLY A MERE FORMALITY, WITH THE HIGHER COURT LIMITING ITSELF TO A REVIEW OF THE DOCUMENTATION AND TESTIMONY SUBMITTED DURING THE ORIGINAL TRIAL. NONE OF OUR SOURCES COULD IMMEDIATELY RECALL AN INSTANCE WHEN A HIGHER MILITARY

COURT HAD SET ASIDE THE JUDGMENT OF THE LOWER MILITARY COURT.

3. WE HAVE NOT MADE A FORMAL INQUIRY TO THE GROC CONCERNING THE PROCEEDINGS OF THE HIGHER COURT DURING APPELLATE REVIEW OF WANG'S CASE. HOWEVER, KNOWLEDGEABLE LAWYERS HAVE TOLD US THAT THE APPELLATE REVIEW OF WANG'S CASE WAS LIMITED TO A REVIEW IN CLOSED SESSION OF THE DOCUMENTS AND EVIDENCE SUBMITTED TO THE LOWER MILITARY COURT AND THAT WANG WAS NOT PRESENT DURING THE PROCEEDINGS. THERE WAS GENERAL AGREEMENT AMONG OUR SOURCES THAT THERE WAS NO NEED FOR THE HIGHER MILITARY COURT TO CONSIDER NEW EVIDENCE OR TO RE-EXAMINE WANG SINCE "THE CASE AGAINST HIM IS VERY STRAIGHT-FORWARD."
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